

Tariff certified by the Secretary of State under Life Sentences (NI) Order 2001 on 19-05-08

THE QUEEN

-v-

WILLIAM CAMPBELL

DECISION ON TARIFF

Ruling by Kerr LCJ and Campbell LJ

KERR LCJ

Introduction

[1] On 15 June 2000, following a trial before Campbell LJ and a jury at Belfast Crown Court, the prisoner was sentenced to life imprisonment for the murder on 28 March 1999 of Andrew Miller, a 54 year old man. The prisoner was 19 years of age at the time of the murder. He has been in custody since 16 April 1999 and has therefore served almost nine years in prison.

[2] An oral hearing before Campbell LJ and myself took place on 24 January 2008 in relation to the fixing of the minimum term to be served by the prisoner under article 11 of the Life Sentences (Northern Ireland) Order 2001. This minimum term or, as it is more commonly known, 'the tariff', represents the appropriate sentence for retribution and deterrence and is the length of time that the prisoner will be required to serve before his case is sent to the Life Sentence Review Commissioners whose responsibility it will then be to assess his suitability for release on the basis of risk.

Factual background

[3] Andrew Miller was beaten to death by the prisoner in the early hours of Sunday, 28 March 1999 in his home at 4b Glenville Park, Whiteabbey. On that date at approximately 4.15 am, police received a call to attend the deceased's flat. On arrival at the scene, a police officer entered the premises and proceeded to a bedroom at the rear. He discovered a man with serious head wounds lying on the floor. There were no signs of life. The bedroom window had been smashed and there was extensive blood on the floor and walls. The bathroom window had also been smashed. There was blood stained tissue paper in the bathroom and blood stained foot prints leading out of the hallway of the flat.

[4] The victim was later identified as Mr Miller. He was aged 54 and lived at the flat alone. The victim had been seen out in the local area on the afternoon of Saturday 27th March. A friend had taken him with his dog to the veterinary surgery early in the afternoon and he returned home at approximately 3.40 pm. He had then gone to Eastwood's bookmakers on the Shore Road, Whiteabbey at around 4.30 pm collecting winnings of £284.50. He was seen by a neighbour walking along Glenville Road in the direction of his flat at approximately 5.20 pm.

[5] Elderly neighbours of the victim reported having been woken up by the sound of "banging and blattering noises" coming from the victim's flat in the early hours of the Sunday morning. They heard glass breaking and a young man shouting "Miller you fucking bastard" or words to that effect. It sounded as if someone was wrecking the flat, throwing things around. These neighbours estimated that the noise had gone on for approximately an hour. Another neighbour reported being awoken by her dog barking. She then heard a noise that sounded like glass being broken. She looked out of her living room window towards the flats at the bottom of the street and saw a light in the bathroom window of the victim's flat and that the window was broken. She said she could see an arm knocking out splinters of glass from the frame.

[6] Some time after these events, a group of young men called at a friend's home who lived opposite the victim's flat. They saw that the door of the victim's flat was lying open. One of them went to look inside and saw blood on the floor. He shouted for the victim but got no reply. They saw blood stained footprints and did not enter any of the rooms. They telephoned for the police.

Autopsy report

[7] The post mortem examination of Mr Miller's body was carried out by Dr Alistair Bentley, Assistant State Pathologist, who determined that the cause of death was multiple blunt force injuries of the head, neck and chest. Analysis of the victim's blood showed that he had not consumed any alcohol nor was he under the influence of any drugs.

[8] The most severe injuries were to the face. There were multiple fractures of most of the bones of the face and the right eye had been dislodged. There was also a large gaping laceration. These facial injuries were the result of multiple blows delivered with considerable force and would have caused marked bleeding and severely impaired breathing due to structural damage of the nasal passages and inhalation of blood. The head injuries had also resulted in bleeding into the membrane bound space around the brain, injury of the brain itself and swelling of the brain. It was likely that the injuries had been inflicted with a blunt weapon and some could have been inflicted with a clenched fist, kicks with a shod foot or head butts. There were severe injuries of the neck with extensive bruising of the muscles of the neck and multiple fractures of the voice-box. These were due to multiple blows delivered with considerable force and could have been inflicted with a blunt weapon, kicking or stamping. They would have impaired respiration.

[9] There were severe chest injuries with multiple rib fractures on both sides, a fracture of the breast bone and bruising of one of the lungs. These were also due to blunt trauma from blows such as kicks delivered with considerable force. These injuries would also have severely impaired respiration.

[10] On both arms and forearms there were a number of bruises which were likely to be defensive type injuries sustained by the victim as he raised his arms in an attempt to protect himself. There was also extensive bruising to the back of the body which could have been the result of blows delivered to that area or it was more likely that they were due to him falling on the floor with force.

Forensic Evidence

[11] A metal saucepan which was bloodstained and had five human head hairs adhering to its base was found at the scene. The blood was identified as that of the victim. The saucepan had been dented to the base

and top edge, indicating that it had been used to beat the victim. A metal frying pan was also recovered at the scene. It bore heavy bloodstains and hairs both of which belonged to the victim. It also was dented around the base and top edge, again indicating that it had been used to beat the victim.

[12] A bloodstained silver coloured metal tankard with a glass base was also recovered. The blood was admitted for DNA analysis and revealed that it had the same DNA characteristics as that of the prisoner. Blood from the prisoner was also found in the bathroom of the victim's home and DNA analysis of blood found on tracksuit bottoms belonging to the prisoner provided strong support for the contention that a mixture of DNA from the prisoner and the victim was present.

[13] Fingerprint evidence showed that the prisoner's left palm impression was found on the victim's bedroom wall.

[14] The bloody footprints recovered at the scene were shown to have been made by someone wearing a pair of Caterpillar, Breckenridge boots size 43.

The prisoner's police interviews

[15] The prisoner was first interviewed by police on 14 April 1999. After caution he denied any knowledge of the murder of the victim. He stated that he had never been in the victim's flat. He was aware of its location as he had previously worked as a bin-man for the council and would have collected bins in Glenville Park. He had last worked as a bin-man in that area in January 1999. He repeated several times that he had never been in the victim's flat. He stated that he knew of Mr Miller as he had previously worked with the prisoner's late grandfather but denied any personal association with the victim.

[16] The prisoner claimed that on the night in question he had left his home at 16 The Oaks, Rushpark, where he lived with his grandmother and aunt, at around 7.30pm and had walked to the Cloughfern Arms to meet some friends. He usually did this on Saturday evenings. Just after 9 pm he and three of his friends got a taxi from the Cloughfern Arms to the Chimney Corner Hotel where they remained until just after 1.00am. He was supposed to get a taxi back with his friends but had become separated from them. He therefore got a taxi back by himself to his home at

Rushpark. He stated that he arrived there at about 2.05am. He went into the house and got some money. His grandmother and aunt were already in bed. He walked back to the Cloughfern Arms hoping to meet up with people for a house party. He arrived there about 2.30am but it was all locked up and no one was there. He decided to walk to the Jordanstown Inn as it sometimes has a "lock-in". He walked down Fernagh Road onto the Shore Road and up towards Jordanstown.

[17] The account continued with the claim that as he reached the Glenavna House Hotel, he was attacked. Someone threw a bottle at him and then started shouting and swearing at him. He walked away but his assailant ran up behind him and punched him on the nose. The assailant was with two other younger men. The prisoner claimed that he ran to the other side of the road and continued on to the Jordanstown Inn arriving there around 3.15am. He spoke to the manager and asked for one of the doormen to be told that this doorman had left ages ago. He then walked back along the Shore Road to his home where he washed himself and went straight to bed.

[18] He was questioned about a pair of Caterpillar boots. He accepted that his mother had bought him a pair of Caterpillar Breckenridge boots size 43 at Christmas but that he had got them badly scuffed and had thrown them out into the bin in February.

[19] His mother had made a statement to the effect that she had seen the boots in his bedroom in early April 1999. When this was put to him, the prisoner claimed that his mother had mistaken another pair of boots for the Caterpillar pair. The box which had contained the boots which the prisoner's mother had bought him was recovered at his friend's house and confirmed that they were a pair of Caterpillar Breckenridge boots size 43 - identical to the boots which had made the footprints at the victim's home.

[20] A statement was taken from the manager of the Jordanstown Inn which confirmed that at 3.47am the prisoner had come to the bar. The manager was standing just outside the door. He spoke to the prisoner who gave the appearance of being nervous. He was told to leave as he was barred from the premises. The manager went inside and told one of the doormen to make sure that the prisoner left. CCTV footage showed a doorman coming out to speak to the prisoner briefly and he then walked off at 3.51am.

[21] The prisoner's uncle observed that he had a cut on his left index finger on Sunday 28 March 1999. He asked the prisoner what had happened to him and Campbell replied that he had been fighting. At police interview, however, the prisoner claimed that he had fallen on a bottle and cut his finger and that he had told his uncle he had been fighting because it was the first thing that came into his head.

[22] On further questioning Campbell claimed that, as a result of the attack which had taken place before he reached the Jordanstown Inn, his nose had been bleeding and he may have had blood on his hand. He also claimed that the cut on his finger had reopened but had originally occurred two weeks previously as the result of a fight which had taken place at Abbots Cross. He denied that the palm print recovered at the scene belonged to him and again repeated that he had never been in the victim's flat.

The prisoner's evidence at the trial

[23] At the trial the prisoner changed his story and accepted that he had entered the victim's flat on the night in question but claimed that the victim was already dead. His evidence was summarised by the trial judge in the following way: -

"He is 20, he lives with his grandmother and aunt at 16 The Oaks. He told you how he had been an apprentice bricklayer and then he started into doing the bins, he did Whiteabbey on the Monday and then he had his job as a postman after that which was in the Whiteabbey area. And he told you about his movements on the Saturday night which I have just mentioned to you.

From perhaps 1 o'clock at the Chimney Corner there is no one who sees or we have heard no evidence from anyone else who saw the accused, between the Chimney Corner and the person who said he saw him when he was at the Chimney Corner and that was a prosecution witness, but a friend of his called Barry McGuire. There is nobody who describes where he was, no one else who describes where he was other than the accused up to 3.47am when you see him on

the video between those two times you have his word for it where he was. So when he says he went to The Oaks, he went to the Cloughfern Arms and he had this incident at Glenavna that is his word that's what he said.

In response to questions from his counsel 'when you left the Chimney Corner what state were you in' and he said 'I was alright I wasn't like I knew what I was doing. When the manager at Jordanstown Inn spoke to him he stated that he "looked a bit spaced out his eyes seemed to be staring and he muttered something'.

At his first interview with the police it was recorded that when he reached the Jordanstown Inn he said "I says is Fyffe there? The manager said no and the next minute some other fella came out in a white shirt and I says is Fyffe there and he said no he's away home". (This account of what happened at the Jordanstown Inn was later confirmed by the CCTV footage.)

He told you he was wearing his trousers, one of his Ralph Lauren shirts, which he doesn't tuck in, and his Pod boots and he said he didn't change his clothes that night at all and that when he got home to The Oaks he left them all for washing and that his grandmother puts the wash through on a Sunday before she goes to church and he said that these tracksuits, on which the spot of blood was found that we have been talking, were at the bottom of his bed and that when he took off clothes to go to bed that night that would be where he would have done so.

Now he said that - going back to his journey - he said that he then went to the Cloughfern Arms to get a drink and to meet his friends and that it would be closed at 1.30 which would have been about the time that he got home to The Oaks but nevertheless he went there because sometimes there is a lock-in, though he had never been at one. I think he said he

couldn't afford to be at one, but there was a woman at the off licence who he said opens it to give them drink, he and his friends. Well he couldn't get in there so he said he went to the Jordanstown Inn where he was barred, but he thought that they might have forgotten that and let him in and let bygones be bygones.

On the way there was the incident at the Glenavna, he says where a bottle was smashed beside him and he turned and saw three figures at the entrance and they shouted abuse at him and he went to walk away, and he heard footsteps and turned round and a fellow hit him a dig in the face and though he could have returned the blow or attempted to return the blow he said he didn't do that, rather he grabbed his nose and ran across the road and his nose was bleeding and he put the back of his left hand against it, and when he got to the Inn his hands were bloody and he couldn't rule out the possibility of there being blood on his face. He went to the Jordanstown Inn with blood on his hands at least and possibly on his face.

When he wasn't allowed in (the Jordanstown Inn), this incident at the Glenavna caused him to throw his head up and so he said: 'stuff it I'll run up the Glenville Road and see if he is up there' meaning the person who had struck him. And of course that gives him a reason for going up Glenville Road and he took for granted he said that the people were from Whiteabbey and as soon as he turned into Glenville Park he saw the two men walking down an alleyway. Though he was going perhaps scarily enough but he was going to take on two men if needs be. He had no idea where they were going and he then did that circuit which he described to you so that he could confront them and see if one of them was the person who punched him.

Then he said he saw the light in the hall with the door open and a light between the door plats and he took it

for granted this was where the two fellows went in as he put it. And if he got it wrong if he got in there and found he was in the wrong place he was going to say sorry mate wrong house I was looking for someone else. He said he saw bloody footprints in the hall, he thinks he saw blood on the living-room door and he looked in the kitchen and bathroom but didn't go in at that stage. Then he went into the bedroom he said and juked round to his left and happened to notice something on the floor he got curious and suspicious and took a few steps over to see what it was and crouched down and put his hand on it and this is what he said `well after I touched it I felt all the sticky stuff on my hand and I jumped up and I just it was light from the hall, and I was able to see my hands from the light from the hall, and blood on my hands on both hands. I didn't actually touch him with my right hand but there was still blood on my right hand, and there was blood on my hand my left hand and I jumped back. I was like shaking and I put my hand on the wall like to balance myself up'. Then he went to the bathroom and scrubbed his hands. He said he couldn't tell if the window was broken. He says that he walked out by the back and possibly some of his blood fell on the tankard which had fallen out of the bathroom window and was lying on the ground."

Judge's Sentencing Remarks

[24] In imposing sentence the trial judge said: -

"I don't intend to say anything about this crime, beyond stating that in my view, before you are released from this sentence that I am about to pass on you, that those whose responsibility it is to decide when you should be released and if you should be released, should have regard, I hope, or will have regard, I hope, to the photographs and to the report that the pathologist put before this court before deciding that it is suitable for you to be released into the public again. Having said that, I now sentence

you to the sentence fixed by law which is one of life imprisonment.”

Previous Convictions

[25] The prisoner has minor previous convictions. He was convicted by Newtownabbey Magistrates’ Court in April 1997 of burglary and was conditionally discharged for two years and ordered to pay compensation of £112. In April 1998 he was bound over in the court on his recognizance in the sum of £150 for 18 months and in March 1999 he was convicted of disorderly behaviour for which he fined £1,200.

Personal Circumstances

[26] The prisoner was 19½ years of age at the date of commission of the offence. He was in full-time employment as a postman and before that had worked as a bin-man with the local council. He was living with his maternal grandmother and aunt. His parents had separated some time previously and he had lived with his mother but, when she formed a new relationship, he went to live with his maternal grandmother for the two years prior to the offence. He has a young half-sister then aged three.

Representations from the victim’s family

[27] A written representation was received from Mrs Jean McAnally, sister of the deceased, on behalf of herself and her other two sisters. In it she said that she and her sisters no longer felt able to live a normal life. She was shocked and revolted when she learned of the horrific injuries which her brother had endured and now finds it very upsetting to watch television programmes involving violent scenes. She no longer feels safe in her own home alone and is afraid to open her door to strangers or go out in the evenings.

[28] Her sister Isobel suffers from panic attacks and needs to have someone with her at all times. The other sister Shirley has a serious heart condition and is unable to go out of the house at all now.

[29] Mrs McAnally described how they were a very close family unit and the three sisters shared in looking after their brother, the deceased, as he had been ill for some time. They did his washing, cleaning, shopping and household tasks.

[30] The sisters find it hard to understand how one man could have inflicted such brutal horrific injuries on anyone. Due to the injuries which their brother had sustained they were unable to see him and say a proper goodbye.

[31] Mrs McAnally said that their experience of the criminal trial was that it was a dreadful ordeal. They found it very difficult to cope with that period both in a practical sense and psychologically. They had never been in a courtroom situation before and found it very stressful. They also were unused to travelling to Belfast.

[32] She stated that on looking back she now believes that the entire family was in a complete state of shock, confusion and denial and they did not avail of any counselling services because they felt they could cope and did not feel they could speak to anyone about how they felt at that time. She stated that when the sentence was announced the prisoner had lunged at her sister Isobel which was a very frightening moment.

[33] Mrs McAnally concluded her representation with these words: -

“Since Andrew’s murder our lives have changed completely we no longer have peace of mind. We all have tried to come to terms of the circumstances of the death. We have found it impossible. There are so many daily reminders of our brother Andrew.”

Representations from the prisoner

[34] The following written submissions were made by the prisoner’s legal representatives: -

“The defendant’s case can generally be placed within the starting point of 15/16 years. It is accepted that the defendant’s culpability is exceptionally high. This appears to have been a motiveless murder committed in the deceased’s own home. The characteristic which makes the crime especially serious under paragraph 12 of the statement is the evidence of gratuitous violence and extensive and/or multiple injuries

inflicted on the victim before death. It is unclear whether the defendant was an intruder in the flat. If the statements of Mr and Mrs Crossan are correct they were known to each other as they heard someone shouting 'Millar you fucking bastard'. However there appears to be no evidence that the offence was committed during a burglary for gain.

It is submitted that there are no features of the case which aggravate the offence (*sic*) upward from this starting point as identified in paragraph 14 of the statement. There is no evidence that the murder was planned. No weapon was taken to the flat although it is likely that the two pans were used during the attack upon him. There was no evidence before the court that the events in the flat were spontaneous in the sense contemplated in paragraph 16 of the statement. The most that can be said of all the known facts is that the defendant did not necessarily go to the flat with an intention to kill Mr Millar.

Next, consideration must be given to the aggravating and mitigating factors in relation to the defendant. Aggravating factors can include a previous record or failures to respond to previous sentences, to the extent that that is relevant to culpability. It is submitted that there is nothing in the defendant's record to suggest that it is irrelevant to his culpability for the index offence before the court.

It is submitted that the only mitigating feature present in this case is the defendant's age (19) at the time of the murder. The court should adjust the minimum term to reflect his relative youth."

[35] We also heard and have fully considered oral submissions made on the prisoner's behalf.

Practice Statement

[36] In *R v McCandless & others* [2004] NICA 1 the Court of Appeal held that the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who were required to fix tariffs under the 2001 Order. The relevant parts of the *Practice Statement* for the purpose of this case are as follows: -

“The normal starting point of 12 years

10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in para 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

11. The normal starting point can be reduced because the murder is one where the offender’s culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

The higher starting point of 15/16 years

12. The higher starting point will apply to cases where the offender’s culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious,

such as: (a) the killing was 'professional' or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.

Variation of the starting point

13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

14. Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the

extent that this is relevant to culpability rather than to risk.

16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty.

Very serious cases

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case."

Conclusions

[37] It has been sensibly accepted that this is a higher starting point case. Mr Miller was a vulnerable individual who was no match in terms of strength for the prisoner. Shocking, extensive and multiple injuries were inflicted. The victim suffered a gruesome, horrible death as a result of a pitiless attack.

[38] There are no mitigating features apart from the prisoner's youth at the time of the murder. He has certainly not evinced any genuine remorse. The claim made by Mrs McAnally that he lunged at her and her sisters

after sentence had been passed has not been accepted by the prisoner and, in the absence of evidence on this issue (which would plainly be inappropriate), we must leave it out of account.

[39] What we will not leave out of account, however, is that the family of the unfortunate Mr Miller have been deprived of any insight or understanding as to why this dreadful attack took place because of the prisoner's brazen, defiant attitude to the crime. The case against him was overwhelming. His attempts to avoid responsibility were pathetic and hopeless. As a consequence of his outlandish story, Mr Miller's unfortunate family will never know why their much loved brother died and that we regard as a significantly aggravating factor.

[40] We have concluded that the appropriate minimum period should be seventeen years. This will include the period spent on remand.